

seemed to him that they were attacking the very foundation upon which the Convention rested, the inherent power of the sovereignty of Maryland to prescribe to the Legislature, their creature, any terms or rules of action which the sovereign people, through this body, might impose upon the Legislature. While, therefore, he did not advocate the policy or the propriety of districting the States, yet he should contend that the power did inhere in the Convention to require the Legislature to pass any law not inconsistent with the Constitution of the United States. Any provision which might be incorporated in the organic law of Maryland, which should be inconsistent with the Federal Constitution, would undoubtedly be void. But while the Convention did not run counter to the Federal Constitution, they had complete and absolute control over the Legislature. The proposition was to require the Legislature, by a positive injunction from the sovereign people, to pass a law not inconsistent with the Federal Constitution, but which, in the terms of the Constitution, should prescribe the time, the place, and the manner of the election. If the Constitution of Maryland should contain a mandate upon the Legislature to pass a law prescribing that the time shall be within a certain period, the place a certain place, and the manner by districting the State, that would be a constitutional law, though the districting, in his opinion, would be impolitic.

He did not regard this as a matter of qualifications at all. The Senators would be elected by the Legislature of Maryland in virtue of a law prescribed by the Legislature. Therefore, if the Constitution of the State required the Legislature to prescribe a law, this would not in itself, be counter to the Federal Constitution. If the people of Maryland should say to the Legislature in their organic law, that they must pass a law at their next session, and that the election of Senators should be by districts, it would be a constitutional act; and the Legislature would be in duty bound to pass such a law. The candidate, although taken from a particular district, would still be a representative of the State of Maryland, elected by the Legislature of Maryland, in virtue of a law which had prescribed that mode. If the Convention should pass no article to that effect, could not the very next General Assembly pass a law providing that the Senator should be elected by districts? And if, under that law, a Senator should be elected and sent to the Congress of the United States, could they reject him? The present Constitution of Maryland was silent upon the subject; and yet the Legislature in 1810 had passed an act districting the State of Maryland, and upon that law Senators had been elected for years. It was rather late in the day to say that the Legislature has not the power to district the State. If then the Legislature has the power, why cannot this Convention lay an injunction on them?

The gentleman from Charles (Mr. Jenifer,) and other gentlemen, had argued that if the Legislature pass a law districting the State, the Legislature could repeal that law. But whether

they could repeal a law passed under an injunction of the State Constitution, was a matter for the Senate of the United States to decide. The Senate would first, perhaps, look at the credentials, and upon the legislative act under which the member should be elected, and would consider him as *prima facie* a Senator. But if a caveat should be filed that the legislative act was in violation of the Constitution of the State, it would then be for the Senate to decide whether he could thus be elected by an act of the Legislature against the State Constitution. There would then be good ground for the argument, that the election was not a valid act of the Legislature, because it was in violation of an organic law which is consistent with the United States Constitution. But this was a question not for the Convention to consider.

But while he held that it would be perfectly in accordance with the Federal Constitution, and perfectly competent for the people, in adopting a Constitution, to declare that Senators shall be elected by districts through the intervention of a legislative act, he was opposed to the exercise of that power, as there was no advantage to be gained by it.

Mr. GRASON considered this provision as clearly in conflict with the Constitution of the United States. The gentleman from Baltimore city would admit that the Constitution had no power to make any provision that would interfere with the Constitution of the United States. It was evident that the Constitution was intended to allow members to be re-eligible; but by taking them in districts they were rendered ineligible. The Legislature of Maryland, he believed, had no right to make them ineligible.

Mr. BRENT said that if there was any such clause in the Constitution of the United States, as that Senators should be re-eligible, he would admit that the present amendment would be unconstitutional, so far as it would prevent a Senator from being re-eligible.

M. DORSEY said that so much was said in this Convention about the sovereign people and their power, that members were sometimes led into error upon the subject. The people were sovereign to the extent of their powers; but there was a power above the people,—a constitution of the United States. If any state undertook to act in contravention of that supreme law of the land, such action would be wholly illegal and void. The effect of this provision and its bearing upon the constitution of the United States was such as to prove that it was beyond the power of the legislature. Its effect was to add a new qualification to the office of Senator of the U. States. The Legislature could fix the manner of the election; whether it should be by joint ballot, concurrent vote, viva voce, or in what way it should be performed. But if the Legislature could pass a law providing that the Senator should come from a particular section of the State, they could superadd fifty different qualifications and grounds of ineligibility. The constitution of the United States prescribed certain qualifications, to which nothing could be added by the Legislature, and the Convention had no more power than the Legisla-